

FEB 5 A CONVERSATION WITH... **ADM. WILLIAM MCRAVEN** IN AUSTIN, TX
 ★ CHANCELLOR OF THE UNIVERSITY OF TEXAS SYSTEM ★

[Register](#) | [Login](#)



Case Against Former Gov. Perry to Proceed

by [Terri Langford](#) | Jan. 27, 2015 | [18 Comments](#)

Sign Up for The Brief

Our daily news summary



[Enlarge](#)

photo by: Marjorie Kamys Cotera

Gov. Rick Perry speaks to reporters on Aug. 16, the day after a grand jury indicted him on two felony counts related to his veto of public integrity unit funding.

REFERENCE MATERIAL

Perry Appeal Of Motion To Quash

[PDF \(136.1 KB\) download](#)

Order Denying Defendant's First Motion

[PDF \(2.1 MB\) download](#)

Tuesday rejected former Gov. [Rick Perry](#)'s attempt to throw out a two-count indictment against him, saying it's too early in the case to challenge the constitutionality of the charges.

*Editor's note:
This story has been updated throughout.

A judge on



NEW ON THE TRIB

Interactive: Demographics of Texas' Undocumented Population

by [Alexa Ura](#) and [Jolie McCullough](#) | 4 hours 9 minutes ago

Amid Uncertain Future for TexasOne, New Effort Emerges

by [Alexa Ura](#) | 4 hours 9 minutes ago

State of Mind: Targeting Emergency Preparedness

Perry's attorneys immediately filed notice that they will appeal the 21-page ruling, which was issued Tuesday afternoon by Bert Richardson, a Republican; the appeals process could take months. The appeal will be considered by the Texas Third Court of Appeals. All five justices elected to that court are Republican; a sixth justice, who has not yet run in a partisan race, was appointed by Perry before he left office.

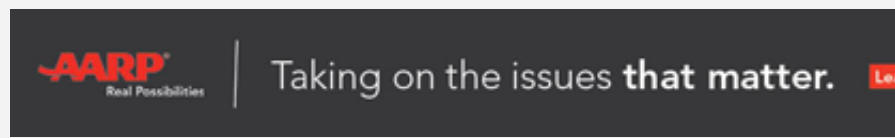
Perry, who has been traveling in preparation for his likely presidential bid, scheduled a press conference for Wednesday in Austin to respond to the ruling.

Perry was indicted on Aug. 15 over allegations he abused the power of his office by threatening to veto funding for the state's public integrity unit unless Travis County District Attorney Rosemary Lehmborg, who had pleaded guilty to drunken driving, resigned. The public integrity unit, which is charged with investigating and prosecuting state corruption, is housed within the Travis County district attorney's office.

by [Alana Rocha](#) and [Justin Dehn](#)
| 4 hours 9 minutes ago

New in Trib+Water: Water Wars in Central Texas

by [John Reynolds](#) | 4 hours 9 minutes ago



Lehmborg, a Democrat, refused to step down. Perry later made good on his threat, [vetoing](#) the approximately \$3.7 million per year budgeted to fund the unit.

The news came just as Perry — a Republican who has all but declared his candidacy for president — earned positive press after a swing through central Iowa over the weekend. Perry has yet to announce an official presidential campaign, but campaign travels took him to South Carolina early this week. The political implications of the indictment could be serious, at least financially.

Attorneys for the former governor have been trying to get the two-count felony indictment thrown out. Perry's attorneys have argued that the indictments — one count of abusing official capacity and one count of illegally coercing a public servant — violate both the Texas and U.S. constitutions.

"Texas law clearly precludes a trial court from making a pretrial determination regarding the constitutionality of a state penal or criminal procedural statute as that statutes applies to a particular defendant," Richardson wrote.

THE MOST

Shared	Viewed	Comments
	Video: Final Moments of the Filing of the Indictment	409 people recommend this.
	Perry Issues More Than Two Dozen Veto Threats	188 people recommend this.
	Court Battle Begins Over New Air Quality Regulations, by Becca Aaronson	506 people recommend this.
	The Evening Brief: Oct. 17, 2013	108 people recommend this.

However, the judge agreed with Perry's attorneys that the second count of the indictment – coercion of a public servant – did not “sufficiently” explain why Perry's actions were not protected because he was acting in his official capacity as governor.

Rather than dismissing this count, the judge said state law allows prosecutors to amend that count, and he granted them permission to do so.

Tony Buzbee, a lawyer for Perry, said Perry's actions were appropriate.

"Governor Perry acted lawfully and properly exercised his power under the law as governor to protect the public safety and integrity of government," Buzbee said in a statement. "Continued prosecution of Governor Perry is an outrage and sets a dangerous precedent in our Democracy."

Richardson was tapped in 2013 to preside over the grand jury investigation. Last November, he was elected to the state's highest criminal appeals court, the Texas Court of Criminal Appeals, but can legally continue to preside over the former governor's criminal case. Richardson has said he will recuse himself from an appeal should the case reach the Texas Court of Criminal Appeals.

The special prosecutor in the case, Mike McCrum, praised Richardson's ruling.

"I think it's the right ruling in many ways," McCrum said. "I think the judge showed a lot of wisdom through the complex allegations made by the defendant."

Last [November](#), Richardson rejected Perry's attorneys' efforts to get the indictment thrown out on a technicality. They argued that the special prosecutor in the case wasn't sworn in properly. Richardson, who swore in McCrum, ruled that the San Antonio lawyer had been sworn in correctly.

Philip Hilder, a Houston-based criminal lawyer, said he would have been surprised if Richardson had dismissed the indictment at this point.

"At this stage of the proceeding, it's rare to get an indictment kicked out," Hilder said. "To do so would have been extraordinary."



The pending indictment will cause some campaign donors to pause, said Brian Haley, the Austin-based former national finance director to the presidential campaigns of Sen. John McCain and former Minnesota Gov. Tim Pawlenty.

"I do think it will be a liability with donors who don't have a relationship with Gov. Perry," he said. "As the field of major donors across the country are weighing their options, they're going to be weighing risks with each candidate."

Haley is currently unaligned in presidential politics this cycle.

But at the same time, some voters indicate that the indictment is not a black mark, and it could endear him to those who believe the indictment to be politically motivated.

Perry supporters were using social media Tuesday afternoon to seek donations to the former governor's political action committee.

U.S. Sen [Ted Cruz](#), R-Texas, slammed the court's decision to allow the case to proceed, saying in a statement that the indictment "has been a political witch hunt." Perry's successor, Gov. [Greg Abbott](#), said in a statement that it is "outrageous and inappropriate" that the governor would be prosecuted for exercising his gubernatorial authority. Democrats, meanwhile, praised the court's decision. Matt Angle of the left-leaning Lone Star Project called Richardson's decision a "legal body blow" for Perry.

One voter on the trail in Iowa mentioned his indictment on the trail on Sunday evening.

"I don't blame him for it," Karen Lambert [said](#). "I think it's ridiculous."

Disclosure: Tony Buzbee was a major donor to The Texas Tribune in 2012. A complete list of Texas Tribune donors and sponsors can be viewed [here](#).

Abby Livingston and Ryan McCrimmon contributed reporting.


RELATED CONTENT

Legal Costs Add Up on Both Sides of Perry's Case

by [Bobby Blanchard](#)

RELATED TRIBPEDIA


[Public Integrity Unit](#)
[Rick Perry](#)

| 6 days 17 hours ago |  (29)

Perry Indictment


No Basis to Quash Perry Indictment, Prosecutors Say

by [Terri Langford](#)

| 85 days 17 hours ago |  (5)

Lawyers File Motion To Quash Perry's Indictment

by [Terri Langford](#)

| 141 days 17 hours ago |  (27)

[↑ Back To Top](#)